

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

LAVERN BERRYHILL,)
Petitioner,)
vs.) No. CIV-11-1513-W
JUSTIN JONES,)
Respondent.)

ORDER

On July 26, 2012, United States Magistrate Judge Robert E. Bacharach issued a Report and Recommendation that addressed the Motion to Dismiss filed by respondent Justin Jones and Jones' challenges to the claims asserted by petitioner Lavern Berryhill in his Petition for Writ of Habeas Corpus ("Petition") [Doc. 1] filed pursuant to title 28, section 2241 of the United States Code. That same day, Magistrate Judge Bacharach also issued his findings and recommendations with regard to the claims in Berryhill's Supplemental Petition for Writ of Habeas Corpus [Doc. 7] ("Supplemental Petition") and with regard to Berryhill's Motion for Summary Judgment [Doc. 26]. Finally, on July 26, 2012, Magistrate Judge Bacharach denied Berryhill's Motion for Evidentiary Hearing and Production of Video Tape [Doc. 21] and his Motion for Certification of Question to Oklahoma Supreme Court [Doc. 34]. Berryhill, who is proceeding pro se, was advised of his right to object, and the matter now comes before the Court on Berryhill's "Response to Magistrate's Reports and Recommendations." See Doc. 52.¹

¹Although "[a] party may respond to another party's objections within 14 days after being served with a copy," Rule 72(b)(2), F.R.Civ.P., the Court finds in the absence any meaningful objection by Berryhill that a response from respondent Justin Jones would not aid the Court's resolution of these matters.

Upon de novo review of the record, the Court concurs with Magistrate Judge Bacharach's suggested disposition of the pending motions and Berryhill's claims in his Petition and Supplemental Petition.

Accordingly, the Court

(1) ADOPTS the Report and Recommendation [Doc. 46] filed on July 26, 2012, which resolves Berryhill's claims in his Petition that he has been subjected to racial hatred, has been deprived of emergency time, or "CAP," credits, has experienced a demotion in credit level without due process and has faced disciplinary sanctions without constitutional safeguards; and

(2) in so doing, GRANTS Jones' Motion to Dismiss [Doc. 16] filed on January 27, 2012, which has been converted in part to a motion seeking relief under Rule 56, F.R.Civ.P., and

(a) DISMISSES sua sponte Berryhill's allegations of racial animosity and a racially-charged plot (Claim 1) as frivolous and his allegations regarding a misconduct report in 2011 (Claim 3) as moot; and

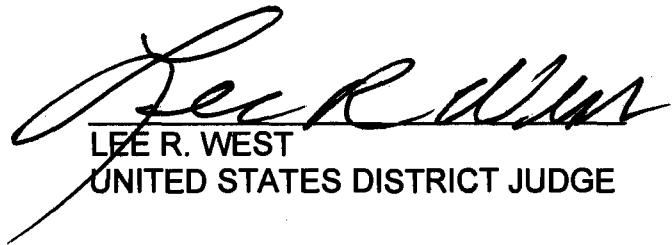
(b) GRANTS summary judgment in favor of Jones on Berryhill's claim (Claim 1) involving the loss of emergency time, or "CAP," credits on the grounds such claim is time-barred, on Berryhill's claim (Claim 2) relating to his classification level because Berryhill has failed to exhaust his state administrative remedies through the grievance procedure provided by the Oklahoma Department of Corrections, and on Berryhill's claims (Claim 3) involving misconduct convictions in 2008, 2009, and 2010 because such claims are untimely;

(3) ADOPTS the Report and Recommendation [Doc. 47] filed on July 26, 2012, which resolves Berryhill's claims in his Supplemental Petition, and DISMISSES sua sponte Berryhill's claims (Claims 4 and 5) in this pleading on the grounds such claims, which involve events occurring in 1997 and/or no later than 2001, are untimely;

(4) ADOPTS the Report and Recommendation [Doc. 48] filed on July 26, 2012, and thereby DENIES as moot Berryhill's Motion for Summary Judgment [Doc. 26] file-stamped February 20, 2012;

(5) AFFIRMS Magistrate Judge Bacharach's rulings with regard to Berryhill's Motion for Evidentiary Hearing and Production of Video Tape [Doc. 21] file-stamped February 7, 2012, and his Motion for Certification of Question to Oklahoma Supreme Court [Doc. 34] file-stamped May 7, 2012; and

(6) ORDERS that judgment in accordance with the instant Order issue forthwith.
ENTERED this 17th day of August, 2012.



LEE R. WEST
UNITED STATES DISTRICT JUDGE